

Assembly Bill No. 653

Passed the Assembly August 17, 2009

Chief Clerk of the Assembly

Passed the Senate July 16, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 3303.1 to the Government Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 653, Feuer. Peace officers: marital privilege.

Existing law provides that a spouse has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if the spouse claims the privilege and the communication was made in confidence between the spouses while they were husband and wife. A married person also has a privilege not to testify against his or her spouse in any proceeding and, when the spouse is a party to a proceeding, a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege. The Public Safety Officers Procedural Bill of Rights Act provides various rights and protections to peace officers, including the procedure for interrogation of peace officers who are under investigation.

This bill would provide that a peace officer who asserts any of the marital privileges described above shall not be subject to administrative discipline for failure to report information to his or her supervisor or department, except when the information concerns criminal or certain other conduct of the peace officer's spouse, who is also a peace officer employed by the department, and other specified conditions apply. The bill would provide that this provision would only apply to administrative disciplinary investigations and hearings, and not to other civil or criminal proceedings.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the time-honored privilege not to testify against one's spouse is grounded on the premise that compelled testimony of a spouse would, in many cases, seriously disturb if not completely disrupt the marital relationship (People v. Sinohui (2002) 28 Cal.4th 205).

As the California Law Revision Commission has commented with respect to Section 970 of the Evidence Code, society generally stands to lose more as the result of that disruption than it stands to gain from the testimony that would be available if the privilege did not exist.

(b) It is the intent of the Legislature to overrule *Riverside County Sheriff's Dept. v. Zigman* (2008) 169 Cal.App.4th 763 to the extent that it is inconsistent with this act.

SEC. 2. Section 3303.1 is added to the Government Code, to read:

3303.1. (a) A peace officer who asserts the privilege of a spouse under Section 970, 971, or 980 of the Evidence Code to refuse to testify or be called as a witness against his or her spouse, or to disclose confidential marital communications, shall not be subject to administrative discipline for failure to report information to his or her supervisor or department, except when all of the following are true:

(1) The information concerns conduct of the peace officer's spouse, who is also a peace officer employed by the same department, that is criminal or a serious violation of department policy punishable by a suspension of 15 days or more, or subjects the department to a specific and significant risk of civil liability.

(2) The interests of justice require disclosure of the information because, after exercising reasonable diligence, independent evidence does not otherwise appear to be reasonably available to proceed with an administrative disciplinary investigation or hearing.

(3) The sheriff or chief of police personally approves the discipline in writing despite the assertion of the marital privilege.

(b) This section does not apply if the peace officer is a percipient witness to the misconduct at issue.

(c) This section shall only apply to administrative disciplinary investigations and hearings, not to other civil or criminal proceedings.

(d) Nothing in this section shall impair any right or privilege pursuant to a memorandum of understanding between a department and a certified bargaining unit representing peace officers, or limit their ability to negotiate and agree to a higher standard of rights or privileges.

Approved _____, 2009

Governor